

# **HIPAA Privacy Rule Checklists Section 164.510 – Opportunity to Agree**

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## HIPAA Privacy Rule Checklists Section 164.510 – Opportunity to Agree

### I. Use or Disclosure of Protected Health Information for Facility Directories

A covered health care provider may use or disclose protected health information for facility directories without the written consent or authorization of the individual if it satisfies each of the following:

- a. ☐ The protected health information is used to maintain a directory of individuals in the covered health care provider's facility;
- b. ☐ The protected health information to be used consists of not more than:
  - ☐ The individual's name;
  - ☐ The individual's location in the covered health care provider's facility;
  - ☐ The individual's condition described in general terms that does not communicate specific medical information about the individual; *and*
  - ☐ The individual's religious affiliation.
- c. ☐ The protected health information is disclosed only for directory purposes;
- d. ☐ The protected health information is disclosed only:
  - ☐ To members of the clergy; *or*
  - ☐ Except for religious affiliation, to other persons who ask for the individual by name.
- e. ☐ A covered health care provider provides the individual with the opportunity to object:
  - ☐ Either by informing the individual of the following:
    - (a) The protected health information that may be included in a directory;
    - (b) The persons to whom the protected health information may be disclosed; *and*
    - (c) That the individual shall be given an opportunity to restrict or prohibit some or all of the uses or disclosures permitted for purposes of a facility directory.
  - ☐ Or, if the individual's incapacity or an emergency treatment circumstance prevents the individual's opportunity to object, a covered health care provider may use or disclose some or all of the protected health information if:
    - (a) Such disclosure is consistent with a prior expressed preference of the individual, if any, that is known to the covered health care provider;
    - (b) Such disclosure is in the individual's best interest as determined by the covered health care provider, in the exercise of professional judgment; *and*
    - (c) The covered health care provider informs the individual and provides an opportunity to object to uses or disclosures for directory purposes when it becomes practicable to do so.

II. **Use or Disclosure of Protected Health Information for Involvement in the Individual's Care and Notification Purposes**

- a. **Individual's Care.** A covered entity may disclose protected health information if all of the following elements are satisfied:

\_\_\_\_\_ The protected health information is disclosed to a family member, other relative, or close personal friend of the individual, or any other person identified by the individual;

\_\_\_\_\_ The disclosed information is directly relevant to such person's involvement with the individual's care or payment related to the individual's health care; *and*

\_\_\_\_\_ Any use or disclosure of protected health information for such purposes is in accordance with **one** of the following:

- i. **Uses and Disclosures with the Individual Present.** If the individual *is present* for, or otherwise available prior to, a use or disclosure and has the capacity to make health care decisions, the covered entity satisfies **one** of the following:

\_\_\_\_\_ Obtains the individual's agreement;

\_\_\_\_\_ Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; *or*

\_\_\_\_\_ Reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure. *Or*

- ii. **Limited Uses and Disclosures when the Individual is Not Present.** If the individual *is not present* for, or otherwise unavailable to agree or object to the use or disclosure because of the individual's incapacity or an emergency circumstance, the following elements are satisfied:

\_\_\_\_\_ The covered entity uses professional judgment to determine that the disclosure is in the best interests of the individual; *and*

\_\_\_\_\_ The covered entity discloses only the protected health information that is directly relevant to the person's involvement with the individual's health care.

*Note:* A covered entity may use professional judgment and its experience with common practice to make reasonable inferences of the individual's best interest in allowing a person to act on behalf of the individual to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.

- b. **Notification Purposes.** A covered entity may use or disclose protected health information if all of the following elements are satisfied:

\_\_\_\_\_ The protected health information is used or disclosed to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death; *and*

\_\_\_\_\_ Any use or disclosure of protected health information for such purposes is in accordance with **one** of the following:

- i. **Uses and Disclosures with the Individual Present.** If the individual *is present* for, or otherwise available prior to, a use or disclosure and has the capacity to make health care decisions, the covered entity satisfies **one** of the following:

- \_\_\_\_\_ Obtains the individual's agreement;
- \_\_\_\_\_ Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; *or*
- \_\_\_\_\_ Reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure.

- ii. **Limited Uses and Disclosures when the Individual is Not Present.** If the individual *is not present* for, or otherwise unavailable to agree or object to the use or disclosure because of the individual's incapacity or an emergency circumstance, the following elements are satisfied:

- \_\_\_\_\_ The covered entity uses professional judgment to determine that the disclosure is in the best interests of the individual; *and*
- \_\_\_\_\_ The covered entity discloses only the protected health information that is directly relevant to the person's involvement with the individual's health care.

*Note:* A covered entity may use professional judgment and its experience with common practice to make reasonable inferences of the individual's best interest in allowing a person to act on behalf of the individual to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.

- iii. **Use and Disclosures for Disaster Relief Purposes.** The covered entity may use or disclose protected health information if the following elements are satisfied:

- \_\_\_\_\_ Protected health information is disclosed to a public or private entity authorized by law or by its charter to assist in disaster relief efforts;
- \_\_\_\_\_ Such information is used or disclosed for the purpose of coordinating with such entities for notification purposes; *and*
- \_\_\_\_\_ The elements in Section II.b.i and II.b.ii apply to the extent that the covered entity, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.